

### **REMARKS**

This amendment responds to the Office Action mailed on January 25, 2005. Filed concurrently herewith is a *Request for a Three Month Extension of Time* which extends the shortened statutory period for response to expire on July 25, 2005. Accordingly, Applicants respectfully submit that this response is being timely filed.

Claims 1-28 were pending, where the Office Action indicated that claims 4 and 6-10 contained allowable subject matter. Claims 16-28 were subjected to a restriction requirement and were withdrawn from consideration by the Examiner. Applicants affirm their election of Claims 1-15 during a telephone conversation with the Examiner. In response to this election, claims 16-28 were cancelled by the above amendment without prejudice or disclaimer. Accordingly, claims 1-15 are now pending in the present application, and Applicant believes these claims are in proper condition for allowance for the reasons set forth below.

### **Claim Rejections Under 35 U.S.C. § 102**

The Office Action rejected claims 1-3, 5 and 11 under U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,839,538 to *Magyar*. Applicants respectfully traverse this rejection and submit that the claims at issue are patentable based on the following remarks.

Claim 1 is directed to a multi-purpose combination ladder/cart assembly having a pair of pivotal frames that are capable of being positioned in either a ladder configuration or a cart configuration. The assembly includes a set of wheels connecting to the first frame that are capable of being arranged in a variety of possible configurations. Based upon a particular wheel configuration that is selected, the center of gravity of the assembly can be variably selected. As described in paragraph [0037] of the present specification, an advantage provided by these various wheel configurations is that the travel characteristics of the cart configuration of the assembly can be variably selected by choosing the center of gravity that best matches the particular load being carried. Claim 1 specifically recites that the set of wheels is capable of being connected to the first frame in a variety of different possible configurations in order to variably select the center of gravity in the cart configuration.

To support an “anticipation” rejection under 35 U.S.C. § 102, the reference must teach

every element and recitation of the Applicants' claims. Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the *Magyar* reference must clearly and unequivocally disclose every element and recitation of the claimed invention in claims 1-3, 5 and 11 in order to support a rejection under U.S.C. § 102(b).

***Magyar* Fails to Teach or Suggest a Set of Wheels Capable of Being Connected to the First Frame in a Variety of Different Configurations**

It is incorrectly asserted in the Office Action that *Magyar* discloses a set of wheels (32) connecting to a ladder section (13) that are capable of being arranged in a variety of possible configurations. To the contrary, *Magyar* teaches that its wheels (32) are only capable of being connected to the ladder section (13) in a single configuration, as shown in FIGS. 1 and 2 of *Magyar*. The primary purpose of the *Magyar* invention is that it be used as a foldable hunting tree stand that is also transportable over the ground through the use of the wheels (32). While *Magyar* teaches that the wheels (32) are capable of being removed, *Magyar* still only teaches that the wheels (32) can be connected in a single configuration. There is no teaching or suggestion in *Magyar* to connect a set the wheels to the ladder section (13) that are capable of being arranging in a variety of possible configurations.

Furthermore, *Magyar* fails to teach or suggest that its tree stand is capable of providing a variably selectable center of gravity while in a cart configuration. *Magyar* merely discloses that its wheels (32) can be connected to or removed from the ladder section (13), wherein the wheels (32) are only removed from the ladder section (13) when the tree stand is erected in its ladder configuration. See col. 3, lines 57-61. *Magyar* fails to disclose removing the wheels (32) from the ladder section (13) when transporting the tree stand in its 'cart configuration,' because removing the wheels (32) while in the cart configuration is contrary to the purpose of the wheels (32), namely allowing the tree stand to be portable. Thus, *Magyar* fails to teach or suggest a set of wheels connecting to the ladder section (13) that are capable of being arranged in a variety of possible configurations in order to provide a variably selectable center of gravity while in a cart configuration.

As can be seen, *Magyar* clearly teaches that its set of wheels (32) is only capable of being

connected to its first ladder section (13) in a single possible configuration.. Thus, *Magyar* fails to teach or suggest a set of wheels connecting to a ladder section that is capable of being arranged in a variety of possible configurations in order to provide a variably selectable center of gravity while in a cart configuration. As such, *Magyar* fails to teach or suggest every element recited in claim 1 of the present invention as required to sustain a rejection under 35 U.S.C. § 102. Applicants submit that claim 1 and its respective dependent claims are patentable over the cited prior art, and removal of the outstanding rejection is respectfully requested.

Claim 2 recites that the center of gravity of the assembly in the cart configuration is capable of being changed by changing the configuration of the set of wheels connected to the first frame. As set forth above, *Magyan* only discloses a single configuration for connecting its wheels (32) to the first ladder section (13), thus *Magyan* necessarily also fails to disclose changing the center of gravity in the cart configuration by changing the configuration of the wheels connected to the first frame. Thus, applicants respectfully submit that dependent claim 2 is separately patentable over *Magyan*.

Claim 3 recites that each of the possible configurations of the set of wheels provides the assembly with different traveling height and angle characteristics in the cart configuration. Again, as set forth above, in its purported 'cart configuration,' *Magyan* only discloses a single traveling height. Without its wheels (32) attached, the *Magyan* tree stand would not be in a cart configuration and would not be capable of being transported over the ground. Thus, applicants respectfully submit that dependent claim 3 is separately patentable over *Magyan*.

Claim 11 recites that the ladder configurations of the multi-purpose ladder/cart assembly includes a step ladder configuration and an extension ladder configuration, as illustrated in FIGS. 1 and 2 of the present application. However, *Magyan* appears to disclose only a single ladder configuration when the device is to be used as a tree stand. *Magyan* fails to teach or suggest that the tree stand can be used in multiple different ladder configurations. Accordingly, applicants respectfully submit that dependent claim 11 is separately patentable over *Magyan*.

#### **Claim Rejections Under 35 U.S.C. § 103**

The Office Action rejected claims 12-15 under U.S.C. § 103(a) as being obvious over

*Magyar* in view of either U.S. Patent No. 6,516,918 to *Hess* or U.S. Patent No. 6,173,811 to *Tornabene et al.* Applicants respectfully traverse this rejection and submit that the claims at issue are patentable based on the following remarks.

The Office Action relies upon the teachings of *Magyar* to disclose the elements of independent claim 1, where the *Hess* and *Tornabene* references are cited as teaching the specific features of dependent claims 12-15. Initially, applicants submit that *Magyar* fails to teach or suggest each of the claim limitations of claim 1, as set forth in applicants' arguments above. Accordingly, the Office Action fails to establish a *prima facie* case of obviousness in setting forth the present rejection.

According to the Manual of Patent Examining Procedure § 2142:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicants respectfully submit that the requirements for establishing an obviousness rejection have not been met. First, the prior art reference must teach or suggest all the limitations of the claims. See *In re Wilson*, 165 U.S.P.Q. 494, 496 (C.C.P.A. 1970). Here, *Magyar* fails to teach or suggest each of the claim limitations of independent claim 1.

Further, claim 12 recites that the ladder/cart assembly includes a groove formed in at least one surface of at least one of its steps for containing a cord. The Office Action cites *Hess* as disclosing a tree stand comprising at least one step having a groove for containing a cord. However, *Hess* fails to teach or suggest this feature. Rather, *Hess* discloses a cable groove formed in a cable block 38 connected to one of the rails of the tree stand to receive a cable tensioner unit. See col. 2, lines 60-64 of *Hess*. *Hess* does not teach or suggest forming a groove in one of the ladder rungs 28 for containing a cord. Thus, applicants respectfully submit that the combination of *Magyar* and *Hess* fails to teach or suggest each and every limitation of claim 12,

and it is respectfully submitted that a *prima facie* case of obviousness cannot be maintained against claim 12.

The Office Action further cites *Tornabene* as disclosing the features of dependent claims 13-15. Claim 13 recites that the ladder/cart assembly includes a receptacle capable of being attached to a plurality of receptacle support members that allow the assembly to be utilized as a wagon when configured in the cart configuration. However, the Office Action fails to set forth any receptacle that is disclosed in *Tornabene* reference as being supported by support members (24, 25, 26, 28, 30). Still further, *Tornabene* discloses that support members (24, 25, 26, 28, 30) allow the device to be used as a basket carrier attached to a hand truck, where *Tornabene* fails to teach or suggest that its device can be utilized as a wagon. Thus, applicants respectfully submit that the combination of *Magyar* and *Tornabene* fails to teach or suggest each and every limitation of claim 13, and it is respectfully submitted that a *prima facie* case of obviousness cannot be maintained against claim 13.

With respect to claim 14, it is asserted that the support members of *Tornabene* form an L-shape between a rod (42) and an outside edge. However, applicants respectfully submit that *Tornabene* fails to teach or suggest that such support members contain a load bearing portion that assists in bearing a load carried by the assembly when configured in a cart configuration. Rather, the 'basket' formed by support members (24, 25, 26, 28, 30) appears to bear the load in the *Tornabene* device and not the support members or steps, as recited in applicants' claim 14. Still further with respect to claim 15, *Tornabene* fails to teach or suggest that the support members of one of the first and second frames further mate with the support members from the other of the frames when the first and second frames are configured into the closed cart position in order to provide a substantially flat carrying surface for objects. Thus, applicants respectfully submit that the combination of *Magyar* and *Tornabene* fails to teach or suggest each and every limitation of claims 14 and 15, and it is respectfully submitted that a *prima facie* case of obviousness cannot be maintained against claim 14 and 15.


Conclusion

In view of the foregoing remarks and amendments and further in view of the already found allowable subject matter in claims 4 and 6-10, Applicants respectfully submit that the subject application is in condition for allowance. Applicants, therefore, respectfully request reconsideration and early notice of allowance.

Respectfully submitted,

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